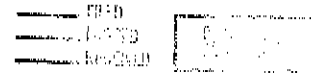




07-CV-00047-CMP



JAN 10 2007

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY [Signature]

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JUDITH BARBOUR, Personal Representative  
of the Estate of Virginia Proctor Brown,

Plaintiff,

v.

MERLE CLINTON BROWN, JR., an  
unmarried individual (a.k.a. M. CLINT  
BROWN); SEATTLE SUNROOM  
COMPANY, INC., a Washington  
Limited Liability Company;  
CONTRACTORS BONDING AND  
INSURANCE COMPANY, a surety insurer;  
FOUR SEASONS SOLAR PRODUCTS LLC,  
a New York limited liability company; THE  
INTERNAL REVENUE SERVICE, a federal  
administrative department,

Defendants.

**CV 07-0047 TSZ**

Civil No. 06-2-38951-4SEA

(Removed from Washington State Superior  
Court for the County of King)

UNITED STATES' NOTICE OF  
REMOVAL

The United States of America and by and through its undersigned counsel, hereby files this notice  
to remove this matter to the United States District Court for the Western District of Washington at  
Seattle, pursuant to 28 U.S.C. § 1442(a)(1). The grounds for removal are as follows:

1. On or about December 12, 2006, plaintiff initiated this matter in the Washington State

NOTICE OF REMOVAL

No fee filed by U.S. Government

no summons issued

1 Superior Court for County of King, by filing an interpleader action naming the Internal Revenue  
 2 Service as a defendant.<sup>1/</sup> A copy of the complaint is attached as Exhibit 1. Attached as Exhibit 2 are the  
 3 remaining documents, filed in Washington State Superior Court, in the government's possession.

4 3. It appears service of a summons and complaint was made upon the United States Attorney  
 5 in and for the Western District of Washington and the United States Attorney General on or about  
 6 December 14, 2006.

7 4. This action is one that may be removed pursuant to 28 U.S.C. §§ 1442(a)(1) and 1444, in  
 8 that it is a civil action commenced in a State court against the United States, involving the collection of  
 9 the revenue and is brought under 28 U.S.C. § 2410.

10 5. By filing this notice, the United States does not waive any defenses listed in Fed. R. Civ.  
 11 P. 12.

12 WHEREFORE, notice is given that the above-captioned action now pending in the Washington  
 13 State Superior Court for the County of King, Case Number 06-2-38951SEA, has been removed to this  
 14 Honorable Court.


---

21  
 22 <sup>1/</sup> While plaintiff has named the Internal Revenue Service as a defendant in this matter, a review of the  
 23 substance of plaintiff's claims reveals that they are attempting to determine priority of the funds at issue. It  
 24 is well established that to the extent the relief requested in a complaint, if granted, would result in a judgment  
 25 that would expend itself on the public treasury or restrain the federal government from action or interfere  
 26 with public administration, the suit constitutes an action against the United States. Dugan v. Rank, 372 U.S.  
 609, 620 (1962) citing Land v. Dollar, 330 U.S. 731 (1947). Consequently, the instant action is one against  
 the United States because the relief sought would expend itself on the public treasury and restrain the federal  
 government from action. Therefore, the Internal Revenue Service should be dismissed as defendant, and the  
 United States of America substituted as the proper defendant.

1 DATED this 9th day of January, 2007.

2 JOHN MCKAY  
United States Attorney

3 ROBERT BROUILLARD  
Assistant United States Attorney

4  
5   
6 KARI D. LARSON  
7 Trial Attorney, Tax Division  
8 U.S. Department of Justice  
9 P.O. Box 683, Ben Franklin Station  
10 Washington, DC 20044  
11 Telephone: (202) 307-6572

12  
13  
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27  
28 NOTICE OF REMOVAL.

U.S. Department of Justice  
P.O. Box 683, Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 514-9593; 144036.1

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing NOTICE OF REMOVAL has been made this 9th day of January, 2007, by depositing copies upon the parties hereto in the United States mail in a postage prepaid envelope addressed to the following:


Robert F. Baker  
Denise M. Hamel  
Lawler Burroughs & Baker, P.C.  
1001 Fourth Avenue Plaza, Suite 4400  
Seattle, WA 98154  
Attorneys for plaintiff

Merle Clinton Brown, Jr.  
8811 Stone Avenue North #1  
Seattle, WA 98103

Seattle Sunroom Company, Inc.  
c/o Merle Clint Brown, Jr.  
8811 Stone Avenue North #1  
Seattle, WA 98103

Jeff Yuseu  
215 NE - 40th St., Suite C 3  
Seattle, WA 98105  
Attorney for defendant Contractors Bonding and Insurance Company

William Krause  
Lane Powell PC  
1420 Fifth Avenue, Suite 4100  
Seattle, WA 98101-2338  
Attorney for defendant Four Seasons Solar Products, LLC

  
KARI D. LARSON  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 683  
Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 307-6572

Attorney for the United States

NOTICE OF REMOVAL

U.S. Department of Justice  
P.O. Box 683, Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 514-9593/144036.1

RECEIVED

2006 DEC 12 AM 11:09

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY KING

JUDITH BARBOUR, Personal Representative  
of the Estate of Virginia Proctor Brown,

Plaintiff,

v.

MERLE CLINTON BROWN, JR., an unmarried  
individual (a.k.a. M. CLINT BROWN);  
SEATTLE SUNROOM COMPANY, INC. a  
Washington Limited Liability Company;  
CONTRACTORS BONDING AND  
INSURANCE COMPANY, a surety insurer;  
FOUR SEASONS SOLAR PRODUCTS LLC, a  
New York limited liability company; THE  
INTERNAL REVENUE SERVICE, a federal  
administrative department

Defendant.

NO. 06-2-38951-4 SEA

COMPLAINT FOR  
INTERPLEADER AND  
DECLARATORY RELIEF

Judith Barbour, Personal Representative of the Estate of Virginia P. Brown,  
alleges the following complaint for interpleader and declaratory relief against  
defendants named above.

COMPLAINT FOR INTERPLEADER AND  
DECLARATORY RELIEF

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4400  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584

COPY  
ORIGINAL

EXHIBIT

I. JURISDICTION AND VENUE

1. Plaintiff is the personal representative of the Estate of Virginia P. Brown, currently subject to probate in King County, Washington under King County Superior Court Cause No. 04-4-03382-6 SEA.

2. Defendant Merle Clint Brown, Jr. is an unmarried man with his last know residence in California and is a named beneficiary under the will of Virginia P. Brown.

3. Defendant Seattle Sunroom Company, LLC ("Seattle Sunroom") is an inactive Washington limited liability company solely owed by Merle Clint Brown, Jr.

4. Defendant Contractors Bonding Insurance Co. ("CBIC") is a surety insurance company doing business in King County, Washington.

5. Defendant Four Seasons Solar Products, LLC (Four Seasons) is a New York limited liability company doing business in King County, Washington.

6. Defendant Internal Revenue Service is a federal administration department.

7. Venue is properly in King County, Washington under RCW 4.12.025 since one or more of the defendants reside in therein.

II. BACKGROUND FACTS

1. Under the terms of decedent's will, M. Clint Brown will be entitled to 1/3 of the residual estate. That residual share is valued at approximately

COMPLAINT FOR INTERPLEADER AND  
DECLARATORY RELIEF

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4400  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584

1 \$ 274,164.75.<sup>1</sup>

2 2. On or about January 21, 2005 a garnishment action was instituted  
3 against Merle Clint Brown and Jane Doe Brown by CBIC under King County Cause  
4 No. 04-2-05979-8 SEA, naming plaintiff the Garnishee Defendant because of the  
5 possibility of funds being owed to M. Clint Brown upon distribution of the estate. A  
6 Writ of Garnishment was issued and on or about February 7, 2005. Attorneys for  
7 the Estate of Virginia P. Brown accepted service of the writ and subsequently  
8 answered that the debt was not yet matured. CBIC's initial judgment is in the  
9 amount of \$16,153.91 excluding costs, fees and subsequent interest.  
10

11 3. On or about June 1, 2005, the Estate received a Notice of Levy, dated  
12 May 24, 2005, from the Department of Treasury - Internal Revenue Service for  
13 unpaid FICA and FUTA taxes by M. Clint Brown and Seattle Sunroom in the  
14 amount of \$23,909.46 due through June 23, 2005. This amount does not include  
15 subsequent interest and penalties.  
16

17 4. On or about June 20, 2005 a garnishment action was instituted against  
18 Merle Clint Brown and Jane Doe Brown and Seattle Sunroom Company, LLC by  
19 Four Seasons under King County Cause No. 03-2-40443-8 SEA, naming the Estate as  
20 Garnishee Defendant due to the possibility of funds being owed to M. Clint Brown  
21 upon distribution of the estate. A Writ of Garnishment was served on the estate on  
22

23  
24 <sup>1</sup> The assets of the estate are currently in cash, stock and bonds. The exact value of the distributive  
share will not be known until the assets are liquidated.

1 or about June 23, 2005. Attorneys for the Estate of Virginia P. Brown subsequently  
 2 answered that the debt was not yet matured. Four Seasons claimed indebtedness  
 3 of \$136,526.60 excluding additional costs, fees and subsequent interest.  
 4

5 5. On or about July 22, 2005, the Estate received a Notice of Levy, dated  
 6 July 1, 2005, from the Department of Treasury-Internal Revenue Service for unpaid  
 7 federal income taxes by M. Clint Brown in the amount of \$53,672.83 through July 31,  
 8 2005. This amount does not include subsequent penalties and interests.

### 9 III. CLAIMS AND CAUSES OF ACTION - INTERPLEADER

10 1. A present controversy exists as to whether plaintiff is required to pay  
 11 any portion of M. Clint Brown's estate distribution to one or more of his creditors  
 12 and the priority of such payments in the event the funds are insufficient to pay all  
 13 creditors in full.

14 2. Plaintiff is entitled to a judicial decree establishing the rights of the  
 15 defendants to the proceeds of M. Clint Brown's distributive share and establishing  
 16 plaintiff's obligations, if any, to pay any, some or all of the proceeds to defendants  
 17 CBIC, Four Seasons and the IRS, and to extinguish defendants' lien claim and rights,  
 18 if any, as against plaintiff.  
 19

### 20 IV. REQUEST FOR RELIEF

21 Plaintiff, Judith Barbour, Personal Representative of the Estate of Virginia P.  
 22 Brown, requests that judgment be entered as follows:

23 1. Declaring that plaintiff may discharge its obligations to the defendant  
 24  
 25  
 26

COMPLAINT FOR INTERPLEADER AND  
 DECLARATORY RELIEF

LAWLER BURROUGHS & BAKER, P.C.  
 1001 FOURTH AVENUE PLAZA, SUITE 4400  
 SEATTLE, WASHINGTON 98154  
 TELEPHONE (206) 464-1000  
 FACSIMILE (206) 682-3584



1 M. Clint Brown and defendants CBIC, Four Seasons and the IRS with regard to M.  
2 Clint Brown's distributive share of the estate by paying such share into the registry  
3 of the court.  
4

5 2. Requiring that the defendants be interpled and settle between  
6 themselves their rights to M. Clint Brown's distributive share of the estate.

7 3. Dismissing plaintiff as a party to the interpleader action between the  
8 defendants.

9 4. Enjoining defendants from further legal proceedings against plaintiff  
10 concerning payment to CBIC, Four Seasons or the IRS of any portion of M. Clint  
11 Brown's distributive share of the estate proceeds on defendants' garnishment or  
12 levy and the alleged debt owed said defendants from M. Clint Brown.

13 5. Awarding plaintiff its statutory costs and attorneys' fees.

14 6. Awarding plaintiff any additional or further relief that the court finds  
15 appropriate, equitable or just.  
16

17  
18 Date this the 17<sup>th</sup> day of November, 2006.

19  
20 LAWLER BURROUGHS & BAKER, P.C.  
21 Attorneys for Plaintiff, Judith Barbour

22 By: Denise M. Hamel  
23 Robert F. Baker, WSBA No. 5537  
24 Denise M. Hamel, WSBA No. 20996  
25

26 COMPLAINT FOR INTERPLEADER AND  
DECLARATORY RELIEF

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4400  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584

INTERNAL REVENUE SERVICE  
SB/SE-COMPLIANCE SERVICES

DEC 20 2006

AREA 12 TERRITORY  
SEATTLE, WASHINGTON

ATTORNEYS AT LAW

**LAWLER BURROUGHS & BAKER, P.C.**

ROBERT F. BAKER  
BLAIR B. BURROUGHS

1001 FOURTH AVENUE PLAZA, SUITE 4400  
SEATTLE, WASHINGTON 98154  
(206) 464-1000 • FAX (206) 682-3584

BRIAN E. LAWLER  
DENISE M. HAMEL

December 14, 2006

Via Certified Mail, Return Receipt Requested

U.S. Attorney General  
10<sup>th</sup> and Constitution  
Washington D.C., 20530

U.S. Attorneys Office  
700 Stewart Street, Suite 5220  
Seattle, WA 98101

*In re: Notices of Levy against Merle C. Brown (251-68-9544) and Seattle  
Sunroom Co. (91-2049897)*

To Whom It May Concern:

This office represents Judith Barbour, the personal representative of the Estate of Virginia Proctor Brown. The IRS has issued two levies referenced above. Because Merle C. Brown's interest in the estate was also garnished by other creditors, the Estate has commenced an interpleader action to resolve competing claims. A copy of the summons and complaint is served herewith.

The Estate is in the process of liquidating its assets and expects to distribute Merle C. Brown's share into the court registry by year end or shortly thereafter. I have included a copy of the Decree of Distribution for your information.

Very truly yours,  
LAWLER BURROUGHS & BAKER, P.C.



Denise M. Hamel

cc: Judith Barbour  
Jamie Bent, IRS

EXHIBIT

2

RECEIVED

2006 DEC 12 AM 11:08

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

In re the Estate of

VIRGINIA PROCTOR BROWN

Deceased.

NO. 04-4-03382-6 SEA

DECREE OF DISTRIBUTION

Petitioner, Judith Barbour, has filed with the Court a Final Report and Petition for Decree of Distribution (the "Report"), and the Court, being fully advised in the premises, finds as follows:

1. Virginia Proctor Brown (the "Decedent") died testate on January 3, 2004, and was a resident of King County, Washington. Judith Barbour, decedent's daughter and Petitioner herein, is the sole Personal Representative following the resignation of M. Clint Brown on September 5, 2005.

2. The Estate was adjudicated to be solvent on July 20, 2004 and the Personal Representatives were granted nonintervention powers. Attached as

DECREE OF DISTRIBUTION - 1-

LAWLER BURROUGHS & BAKER, P.C.

1001 FOURTH AVENUE PLAZA, SUITE 4300  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584

COPY

1  
2 Exhibit B to the Report is a statement of debts and fees paid or to be paid and  
3 receipts, or canceled checks for expenses paid on behalf of the Estate.

4 3. There were no creditor's claims against the Estate. However several  
5 creditors of M. Clint Brown have garnished or levied against M. Clint Brown's  
6 interest in the Estate. Those claims are itemized in the Report. Since the amount of  
7 the claims may exceed M. Clint Brown's distributive share, an interpleader action is  
8 appropriate to resolve the competing claims to said share.

9 4. There was no federal estate tax or State of Washington estate tax due.

10 5. Decedent is survived by three adult children, Judith Babour, M. Clint  
11 Brown and George Brown. The decedent's will directs that the residue of the Estate,  
12 following specific bequests of personal property, is to be divided equally between  
13 the three children.

14 6. The Personal Representative is not requesting a fee.

15 7. Attorney's fees and costs of \$19,000 and accounting fees of \$30,058.72  
16 are reasonable, given the complications to the Estate arising from the necessity of  
17 the Estate having to go back several years to resolve tax issues and given that the  
18 Estate has had to deal with M. Clint Brown's creditor issues.

19 8. Following the completion of the payments and distributions herein  
20 and the filing of receipts and a Declaration of Completion, the Personal  
21 Representative will have completed the administration of the decedent's Estate, the  
22 Estate will be ready to be closed, and the Personal Representative should be  
23 discharged.

24  
25  
26 DECREE OF DISTRIBUTION - 2-

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4300  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584

Based on the foregoing Findings:

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. The expenses attached as Exhibit B to the Report are reasonable and approving the same;
2. The Personal Representative shall liquidate the residue of the Estate as soon as is reasonably possible and distribute one-third thereof to each of Judith Barbour, George Brown and M. Clint Brown; provided that:
  - i. \$1,000 shall be reserved from each distribution for a total of \$3,000 to pay for taxes and other potential expenses of the Estate until the Estate is ready to be closed and subject to remittance in the event that Estate expenses exceed the reserve, and
  - ii. In the event expenses are less than the reserve, the Petitioner shall distribute the excess, one-third to each of the above recipients; provided that M. Clint Brown's share shall be deposited into the registry of the court under the Interpleader Action unless an order from that matter directs otherwise;
3. The Petitioner shall commence an interpleader action as to M. Clint Brown's one-third distributive share ("Interpleader Action"), which share be deposited into the Court subject to further order of the court

DECREE OF DISTRIBUTION - 3-

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4300  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584

1 in that matter as to the appropriate distribution to competing  
2 claimants. Any fees and costs associated with the Court registry shall  
3 be deducted from the said deposited share;  
4

- 5 4. The Personal Representative shall be discharged upon the filing of the  
6 final tax return, upon the filing of receipts of payment of distributions  
7 mentioned herein, upon dismissal from the Interpleader Action, and  
8 upon filing a Declaration of Completion herein.

9 DATED this \_\_\_\_ day of ~~DEC~~ 12 2006, 2006.

10 **ERIC B. WATNERS**

11  
12 Judge/Court Commissioner

13  
14 Presented By:

15 LAWLER BURROUGHS & BAKER, P.C.  
16 Attorneys for Personal Representative of  
17 The Estate of Virginia Proctor Brown

18  
19 By: Denise M. Hamel  
20 Robert F. Baker, WSBA No. 5537  
21 Denise M. Hamel, WSBA No. 20996

22  
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25  
26 DECREE OF DISTRIBUTION - 4-

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4300  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584

14

RECEIVED

2006 DEC 12 AM 11:09

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY KING

JUDITH BARBOUR, Personal Representative  
of the Estate of Virginia Proctor Brown,

Plaintiff,

v.

MERLE CLINTON BROWN, JR., an unmarried  
individual (a.k.a. M. CLINT BROWN);  
SEATTLE SUNROOM COMPANY, INC. a  
Washington Limited Liability Company;  
CONTRACTORS BONDING AND  
INSURANCE COMPANY, a surety insurer;  
FOUR SEASONS SOLAR PRODUCTS LLC, a  
New York limited liability company; THE  
INTERNAL REVENUE SERVICE, a federal  
administrative department

Defendant.

NO. 06-2-38951-4 SEA  
SUMMONS

THE STATE OF WASHINGTON TO: M. CLINT BROWN

TO THE DEFENDANT: A lawsuit has been started against you in the above  
entitled Court by plaintiff. Plaintiff's claim is stated in the written complaint, a copy  
of which is served upon you with this summons.

SUMMONS -1-

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4400  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584

COPY

1 In order to defend against this lawsuit, you must respond to the complaint by  
2 stating your defense in writing, and serve a copy upon the undersigned attorney for  
3 the plaintiff within twenty (20) days after the service of this summons, excluding the  
4 day of service, or a default judgment may be entered against you without notice. If  
5 you reside outside the State of Washington, you must respond to the complaint by  
6 stating your defense in writing, and by serving a copy upon the undersigned  
7 attorney for the plaintiff within sixty (60) days after the service of this summons,  
8 excluding the day of service, or a default judgment may be entered against you  
9 without notice. A default judgment is one in which the plaintiff is entitled to what he  
10 asks for because you have not responded.  
11

12 If you serve a Notice of Appearance on the undersigned attorney, you are  
13 entitled to notice before a default judgment may be entered.  
14

15 You may demand that the plaintiff file this lawsuit with the court. If you do  
16 so, the demand must be in writing and must be served upon the person signing this  
17 summons. Within fourteen (14) days after you serve the demand, the plaintiff must  
18 file this lawsuit with the court, or the service on you of this summons and complaint  
19 will be void.

20 If you wish to seek the advice of an attorney in this matter, you should do so  
21 promptly so that your written response, if any, may be served on time.

22 // // //

23 // // //

24  
25  
26 SUMMONS -2-

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4400  
SEATTLE, WASHINGTON 98154  
TELEPHONE (206) 464-1000  
FACSIMILE (206) 682-3584



1 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules  
2 of the State of Washington.  
3

4  
5 Date this the 17<sup>th</sup> day of November, 2006  
6

7 LAWLER BURROUGHS & BAKER, P.C.  
8 Attorneys for Plaintiff Judy Barbour  
9

10 By: Denise M. Hamel  
11 Denise M. Hamel, WSBA No. 20996  
12  
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SUMMONS -3-

LAWLER BURROUGHS & BAKER, P.C.  
1001 FOURTH AVENUE PLAZA, SUITE 4400  
SEATTLE, WASHINGTON 98154  
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